

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SCOG 14-01 Voter Control of Gambling Expansion

SPONSOR(S): Select Committee on Gaming

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------|----------------|--|
| Orig. Comm.: Select Committee on Gaming | | Stranburg | Morton |

SUMMARY ANALYSIS

This joint resolution proposes to create Section 28, Article X of the Florida Constitution, relating to voter control of gambling expansion. The joint resolution requires a constitutional amendment proposed by initiative petition to expand gambling in any fashion in the state.

Expansion of gambling is defined to include the introduction of any additional types of games or the introduction of gambling at any facility not operating as of March 4, 2014, or expressly authorized by statute this session. Gambling is defined consistent with federal law governing gambling on Indian lands.

The resolution does not alter the Legislature's ability to restrict, regulate, or tax gambling activity in Florida.

The resolution does not limit the State of Florida's ability to negotiate a state-tribal compact under the federal Indian Gaming Regulation Act or to enforce any current compact.

The joint resolution requires publication prior to the election. The required publication of the amendment would have an effect on expenditures. An estimate of this impact on expenditures is not currently available.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Gaming in Florida is currently regulated by multiple state agencies. Although gambling is generally illegal,¹ certain gaming activities are authorized. Section 7, Article X of the Florida Constitution prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.

The Florida Supreme Court has found that "The Constitution of Florida is a limitation of power, and, while the Legislature cannot legalize any gambling device that would in effect amount to a lottery, it has inherent power to regulate or to prohibit any and all other forms of gambling; such distinction being well defined in the law."² The Court went on to define limit the applicability of this provision to such legalized lotteries, "the primary test of which was whether or not the vice of it infected the whole community or country, rather than individual units of it. Any gambling device reaching such proportions would amount to a violation of the Constitution."³ Thus, the Legislature may regulate keno,⁴ bingo,⁵ slot machines.⁶

Pari-mutuel wagering on horseracing and greyhound racing was authorized by statute in 1931 and on Jai Alai in 1935.⁷ Such activities are regulated by chapter 550, F.S., and overseen by the Division of Pari-mutuel Wagering (DMPW) within the Department of Business and Professional Regulation.

Section 15, Article X of the State Constitution authorizes the state to operate lotteries. The Legislature has implemented this provision through chapter 24, F.S., which establishes the Florida Lottery.

Section 23, Article X of the State Constitution authorizes slot machines at eight pari-mutuel facilities in Miami-Dade and Broward Counties that conducted pari-mutuel wagering on live events in 2002 and 2003, subject to local approval by countywide referendum. The Legislature has implemented this provision through chapter 551, F.S. The DPMW oversees such activities.

In 2010, the Legislature authorized slot machines at pari-mutuel wagering facilities in counties that meet the definition of s. 125.011, F.S., (currently Miami-Dade County), provided that such facilities have conducted pari-mutuel wagering on live racing for two years and meet other criteria.⁸ Hialeah Park is the only facility that operates slot machines under this provision.

The Legislature also provided that pari-mutuel wagering facilities in other counties could gain eligibility to conduct slot machines if located a county that has approved slot machines by a referendum which was held pursuant to a statutory or legislative grant of authority granted after July 1, 2010, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.⁹

¹ Section 849.08, F.S.

² Lee v. City of Miami, 121 Fla. 93, 102 (1935).

³ *Id.*

⁴ Overby v. State, 18 Fla. 178, 183 (1881).

⁵ Greater Loretta Imp. Ass'n v. State ex rel. Boone, 234 So.2d 665 (Fla. 1970).

⁶ See Lee v City of Miami, 121 Fla. 93 (1935), and Florida Gaming Centers v. Florida Dept. of Business and Professional Regulation, 71 So.3d 226 (1st DCA 2011).

⁷ *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁸ See Ch. 2010-29, L.O.F. and s. 551.102(4), F.S.

⁹ See AGO 2012-01 interpreting the slot machine eligibility provision as requiring additional statutory or constitutional authorization "to bring a referendum within the framework set out in the third clause of section 551.102(4)."

Gambling on Indian lands is regulated by federal law, which requires the State negotiate in good faith for compacts governing the operation of certain types of games, if authorized for any person in the state.¹⁰ Florida has negotiated such a compact with the Seminole Tribe of Florida.

Proposed Changes

The joint resolution proposes creation of Section 28, Article X of the Florida Constitution relating to voter control of gambling expansion. The joint resolution amends the Florida Constitution to require an amendment proposed to the Florida Constitution proposed by initiative petition to expand gambling in the state.

Gambling is defined consistent with federal law governing gambling on Indian lands.¹¹ The resolution sites the federal definition of class III gaming. Such games include:

- House banking games such as baccarat, chemin de fer, blackjack (21), and pai gow;
- Casino games such as roulette, craps, and keno;
- Slot machines as defined in 15 U.S.C. s. 1171(a)(1);
- Electronic or electromechanical facsimiles of any game of chance;
- Sports betting and pari-mutuel wagering, including, but not limited to, wagering on horse racing, dog racing, or jai alai; and
- Lotteries, other than state-operated lotteries.

The resolution specifically includes the following in the definition of gambling, regardless of how those devices are defined under the federal law:

- Electronic gambling device,
- Internet sweepstakes device, and
- Video lottery terminal, other than a state-operated video lottery terminals.

Expansion of gambling is defined in the joint resolution as the introduction of gambling at any facility or location in the state other than those facilities lawfully operating as of March 4, 2014, or expressly authorized by statute enacted during the 2014 regular session of the legislature. It includes the introduction of additional types or categories of gambling at any location.

The joint resolution does not limit the Legislature's authority to restrict, regulate, or tax any gambling activity by general law.

The joint resolution does not limit the authority or obligation of the State of Florida to negotiate a tribal-state compact under the federal Indian Gaming Regulation Act or to enforce any existing tribal-state compact.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014.

B. SECTION DIRECTORY:

This is a joint resolution, which is not divided by sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have an impact on state government revenues.

¹⁰ See Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

¹¹ Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

2. Expenditures:

This amendment requires publication prior to the election. The required publication of the amendment would have an effect on expenditures. An estimate of this impact on expenditures is not currently available. This must be paid regardless of whether the amendment passes, and would be payable in FY 2014-2015 from General Revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have an impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by 60 percent of the electors voting on the question, the proposed amendment will take effect January 6, 2015.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An earlier version of this analysis contained errors as to the require vote for approval of the amendment and the effective date. The amendment must be approved by 60 percent of the electors voting on the question and, if approved by such, would be effective January 6, 2015.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES